Pacific Maritime Association *and* International Longshoremen's and Warehousemen's Union, Local No. 63. Case 21–CA–29491

September 29, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

On March 21, 1994, Administrative Law Judge James L. Rose issued the attached decision. The Respondent, the General Counsel, and the Charging Party each filed exceptions and a supporting brief. The Respondent filed an answering brief to the Charging Party's exceptions, and the Charging Party filed an answering brief to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order as modified.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Pacific Maritime Association, Long Beach, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

''(a) Refusing to furnish on request to International Longshoremen's and Warehousemen's Union, Local No. 63, information it requested which is relevant and necessary to perform its functions as a representative of employees of the Respondent's members.''

2. Substitute the following for paragraph 2(a).

''(a) Obtain from its employer-members and furnish the Union all the information requested in the Union's July 14, 1993 letter.''

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with the International Longshoremen's and Warehousemen's Union, Local No. 63, by refusing to furnish information relevant and necessary for the Union to perform its obligations as the representative of employees of members of the Pacific Maritime Association.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL obtain from our employer-members and furnish the Union all the information requested in its July 14, 1993 letter.

PACIFIC MARITIME ASSOCIATION

Steven Siebert, Esq., for the General Counsel.
Dennis A. Gladwell, Esq., of Irvine, California, for the Respondent.
Robert Remar, Esq., of San Francisco, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JAMES L. ROSE, Administrative Law Judge. This matter was tried before me at Los Angeles, California, on January 21, 1994, upon the General Counsel's complaint which alleged that the Respondent refused to furnish certain requested information in violation of Section 8(a)(5) of the National Labor Relations Act.

The Respondent denied that the Union is the bargaining representative for the employees of its members and further denied that it violated the Act by failing to furnish the requested information.

Following the hearing, counsel submitted briefs. Upon the record as a whole, including my observation of the witnesses, briefs, and arguments of counsel, I enter the following

FINDINGS OF FACT

I. JURISDICTION

Pacific Maritime Association (the Respondent) is an organization of various employers engaged in longshore and stevedoring operations at harbors along the west coast of the United States, including those in the vicinity of Long Beach and Los Angeles, California. One function of the Respondent is to represent its employer-members in negotiating and ad-

[1] In adopting the judge's finding that the Respondent violated Sec. 8(a)(5) of the Act by failing to furnish the Union with the information the Union had requested in its July 14, 1993 letter, we note that the information requested concerned wage rates of unit employees, and thus was presumptively relevant. *Pfizer, Inc.*, 268 NLRB 916, 918 (1984).

Member Devaney notes that he dissented in *Coca-Cola Bottling Co.*, 311 NLRB 424 (1993), a case which the judge found inapposite to the instant case.

[2] The General Counsel and the Charging Party except to the judge's failure in his recommended Order to provide that the Respondent furnish the Union all the information requested in the Union's July 14, 1993 letter. We find merit to this exception and shall modify the recommended Order accordingly and shall substitute a new notice to employees. We also shall modify par. 1(a) of the recommended Order to more closely reflect the violation found.

ministering collective-bargaining agreements. Employer-members of the Respondent annually derive gross revenues in excess of $50,000 for the transportation of passengers and freight from the State of California to points outside. The Respondent admits, and I find, that it and its members are employers within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

It is alleged, and admitted, that International Longshoremen's and Warehousemen's Union (the International) and its Local No. 63 (the Union) are labor organizations within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICE

A. *The Facts in Brief*

For many years the Respondent, on behalf of its members, and the International, on behalf of several locals including the Union, have negotiated collective-bargaining agreements covering units of employees engaged in various aspects of the longshore and stevedoring industry. The collective-bargaining agreement involved here is entitled ''Pacific Coast Longshore and Clerks' Agreement Contract Document for Clerks and Related Classifications'' and appears to be part of a comprehensive agreement between the International and the Respondent. It is effective from July 1, 1993, to July 1, 1996,

> This contract contains hourly pay rates for various clerk classifications; and in addition, provides guaranteed hours for various jobs. For instance, on the day shift basic clerks who are called for a job and ''turn to'' are guaranteed eight hours pay, while supervisors and supercargos are guaranteed eight hours plus two hours overtime.

Counsel for the Respondent argues that in practice clerks never work the full hours for which they are paid. Rather, they are assigned a job and when the job is finished, usually after 6 or 7 hours, they are free to leave. This is disputed by David Miller, vice president of the Union and an active employee in the industry. Miller testified that clerks always stay their full shift, though he admits that sometimes there is no work to perform. Unstated in his testimony is whether employees who are guaranteed an additional 2 (or more) hours of overtime always stay at the jobsite for the extra hours. In any event, the contract does provide for guaranteed hours or in lieu thereof, pay for those hours.

The Union and the Respondent jointly operate a hiring hall through which, apparently, most employment needs are met. While employers are permitted to hire steady employees, the joint labor relations committee may limit the number of hours per month an employee may work before being required to go to the bottom of the hiring hall list. The purpose of this is to equalize the available work among union members. When an employee has been paid for 141 hours by the 15th of a month, he then must return to the hiring hall list.

As a matter of practice some employees are paid in excess of the guarantees. According to the testimony of Carie Clements, the Respondent's southern California area manager, this has been the practice for many years and evolved so that employers could ensure that they get the services of the best clerks.

This case involves the matter of excess pay. At a meeting on July 14, 1993, between representatives of the Respondent and the Union, the Union requested certain information regarding excess pay. Specifically, the Union requested information identifying all clerks who receive wages and benefits in excess of those specified in the contract pursuant to ''side deal,'' ''understanding,'' or ''arrangement.''

The Respondent stated that all the information available was included on the weekly computer printouts given the Union entitled ''Detail List Hours by Port/Local 1-63.'' Among other things, this document gives the straight and overtime hours for each employee of each reporting company.

Miller testified that in conversations with individual employers he was told that they keep records of ''non-productive'' time. Clements testified that she asked various members and was advised that no such records are kept.

B. *Analysis and Concluding Findings*

1. Status of the Union

The Respondent argues that the Union is not the bargaining agent for employees of its members. Therefore, the Union has no standing to request information.

While the International is the primary negotiator of the various Longshoremen contracts, it is clear that the International negotiated on behalf of the Union. Employees of the Respondent's members belong to the Union and the Union services the contract and represents those employees in grievance matters as well as negotiated supplements to the contract.

If the material requested is necessary to the Union's representation of employees of the Respondent's members, then I conclude the Union has standing to make the request, denial of which is violative of Section 8(a)(5). E.g., *Postal Service*, 307 NLRB 1105 (1992).

2. The requested information

Although the parties dispute the Respondent's fact assertion that clerks do not typically work all the hours for which they are paid, this is not a material issue.

Material here is whether certain members of the Respondent have agreed to pay certain clerks in excess of the contract guarantees, and whether, and to what extent, this practice is documented in any way.

Clements testified that in fact some employer-members do pay some clerks in excess of the contract guarantees. Thus she testified that

> on a given day, an employer doesn't know what portion of that money is extra payment or may have been time actually worked by the marine clerk. There's just—there's a market rate for a clerk, if you will, and the company will pay that to a clerk and whether or not that clerk is physically on the payroll working it in many cases doesn't really matter to the employer. All they care about is that the clerk shows up, he does his job, he does it well, and then he's free to go. And, as long as the job gets done and gets done well, he gets paid that market rate, whether it's 12 or 13 or 14 hours

> in a shift. But, as far as an exact log of what portion on a given day is extra payment or time worked, I don't know that that exists and, from what I've been told, it doesn't.

Therefore the question is whether any such employer has any information concerning this practice. I conclude they must. It may well be that employers do not keep daily records which would reflect when during the day a given clerk leaves. However, since employers have a practice of guaranteeing certain employees extra hours, there must be some documentation relating to the practice. While the information may not be in the precise form requested by the Union, there must be some evidence in possession of the individual employers concerning which clerks are guaranteed extra pay, and how much.

I conclude that such information is a legitimate area of inquiry for the Union. Although Miller was unable to state exactly what use the Union would put to this information, such clearly relates to the compensation of employees and could reasonably be the factual basis for limiting excessive guarantees. Indeed, excessive guarantees pursuant to some agreement with employees might be violative of the contract. On the other hand, after receiving this information, the Union might determine to do nothing. In any case, this is information which the Union ought to be able to obtain in order to function as the representative of its employee-members. Accordingly, I conclude it is the type of information which on request the Respondent is bound to obtain from its members and submit to the Union. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967).

The recent case of *Coca-Cola Bottling Co.*, 311 NLRB 424 (1993), relied on by the Respondent is inapposite. There the union was unable to establish its need for information which it sought primarily to aid the respondent's competitors. The Board held that to be entitled to information a union must do more than make ''general avowals of relevance.''

Here, I conclude, the relevance is clear even though the Union's officer did not know precisely what use it would be put to. Whether and to what extent union members have deals for extra compensation clearly can have an impact on the wages and hours of others.

Finally I reject the Respondent's contention that the Union's request was bogus. Though the Union may be able to obtain some of this information from its members, such does not relieve the Respondent of its duty under the Act. *New York Times Co.*, 265 NLRB 353 (1982).

Accordingly, I conclude that by refusing to obtain from members and furnish to the Union all information available concerning extra pay for employees the Respondent violated Section 8(a)(5) of the Act.

IV. THE REMEDY

Having concluded that the Respondent violated Section 8(a)(5) of the Act by not furnishing the requested information, I shall recommend that it cease and desist from doing so and take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record,[1] I issue the following recommended[2]

ORDER

The Respondent, Pacific Maritime Association, Long Beach, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to furnish, on request, to International Longshoremen's and Warehousemen's Union, Local No. 63, information it requested which is necessary to perform its functions as a representative of employees of the Respondent's members.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Obtain from employer-members and furnish to the Union all information concerning each member's practice of guaranteeing hours in excess of those set forth in the collective-bargaining agreement, including the name of the individuals who receive the guarantee, the form and the amount of the guarantee.

(b) Post at its office, and at the facilities of all employer-members copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

---

[1] Certain nonsensical comments at p. 66 of the transcript relate to aftershocks of an earthquake in the Los Angeles area a few days prior to the hearing.

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''